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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,099	03/13/2001	Christopher J. Poux	2506.2013-001	3114

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EXAMINER

MICHALSKI, JUSTIN I

ART UNIT	PAPER NUMBER
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2644

DATE MAILED: 09/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/808,099

Applicant(s)

POUX ET AL.

Examiner

Justin Michalski

Art Unit

2644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 August 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-80 is/are pending in the application.
- 4a) Of the above claim(s) 12-80 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 12-80 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 23 August 2005.

Applicant's election without traverse of Group I, Species A drawn to claims 1-11 in the reply filed on 23 August 2005 is acknowledged.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 4, and 7-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Voroba et al. (Hereinafter "Voroba") (US patent 4,759,070).

Regarding Claim 1, Voroba discloses a method of selecting an acoustical format for a hearing impaired user, the method comprising the steps of: providing a hearing aid test unit (Fig. 1, 200) that simulates a production hearing aid to be supplied to a user and coupling a selector module to the test unit (Figs. 2 and 3) whereby the user may select one of multiple electroacoustic formats (Col. 3, lines 38-66).

Regarding Claim 4, Voroba further discloses a core having a microphone (20, 212) and speaker (220), and the core is removably attached to a shell (Col. 4, lines 5-13).

Regarding Claim 7, Voroba further discloses both right and left test modules (Col. 7, lines 44-61).

Regarding Claim 8, Voroba further discloses a selectable electroacoustical format is provided in a mass produced hearing aid device having a form, fit, and function similar to the hearing aid test unit (Paragraph bridging columns 2 and 3).

Regarding Claim 9, Voroba further discloses pressing a keypad to select one of multiple electroacoustical formats (Figs 2 and 3, Col. 3, lines 38-66).

Regarding Claim 10, Voroba further discloses providing multiple types of sample recordings so that a user can compare one format to another (Col. 3, lines 18-25).

Regarding Claim 11, Voroba further discloses downloading digital information from the selector module to program a corresponding acoustical format of the hearing aid test unit (Col. 3, lines 38-66).

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, 3, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Voroba as applied to claim 1, in view of Lyregaard (US Patent 4,712,245).

Regarding Claims 2, 3, 5, and 6, Voroba discloses a hearing aid with a reusable core (Col. 4, lines 5-13) but does not disclose disposable shell. Lyregaard discloses a hearing aid inducing a microphone (2) and speaker (4) with a disposable shell (paragraph bridging columns 2 and 3) to provide a good fit to the user without discarding the expensive inner component. Lyregaard further discloses a tab and lock mechanism to connect the shell to the inner components (Fig. 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a disposable shell in order to provide a good fit for a user without discarding the expensive inner components during modifications as taught by Lyregaard.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lindemann et al. (US patent 6,118,877) discloses a hearing aid testing unit with test unit.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin Michalski whose telephone number is (571)272-7524. The examiner can normally be reached on M-F 7-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on (571)272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JIM



September 2, 2005



VIVIAN CHIN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600